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# Indonesian State Intelligence Agency's Responsibility in Negligence Wiretapping Evidence of Terrorism Suspect

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**Abstract.** Wiretapping evidence include in confidential evidence which need to be guarded and become State Intelligence needs for prove at trail court purpose, this become crutial to keep in mind this confidential evidence is State Intelligence's responsibility to keep convidential secret. negligence nor deliberate State Intelligence personel in keeping wiretapping evidence that usually form as voice convertation record or personal text massages from suspects and/or terorism executant becomes important when it comes to confidential guarantee remembering it writtens on Undang – undang, proofing convidential evidence on court are needs to prove for the purpose of next investigation. State Intelligence can get permission doing wiretapping for the next six month untill undetermined time limit, Lack of laws in which regulates specifically regarding the responsibilities of the Intelligence Agency if negligence occurs in preserving evidence becomes important and not limited to code of ethics sanctions. Using normative juridical methods to find out the basic basis for the importance of updating the Intelligence Agency's code of ethics in accounting for the evidence carried by each personnel. Apart from that, this research also aims to determine the form of accountability of the State Intelligence Agency in its responsibilities.

**Keywords:** Wiretapping. State Intelligence Agency, Terorism

## INTRODUCTION

In modern nowdays, privacy becomes more important than ever, there are many ways to communicate with others such whatsapp, telegram, and many more. Each platform has their own ways to keep their consumer's privacy, but that does not mean our privacy is save from espionage and wiretape hacks, There are more than one way to crack the codes on those social aplication, but not every wiretapping are aimed for crime, there are also those who have good intentions.

Terorism act are clasified as an extraordinary crime, Wiretrapping is an effective way of expose this type of crime because the method used is to record activities when planned, committed crimes. However, wiretapping can be a separate crime if done to obtain personal information, or even wiretapping produces personal information that is not authorized to be known by law enforcement (Afifah, 2020).

Article 28G of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), guarantee every person have their right for their personal information, their privacy, and their a sense of security and protection from threats of fear of doing something that is a human right (Sumariyastuti, 2019). Human rights to have their privacy protected by the law are basically should receive legal protection as it written on Constitution.

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Urgency for legal rules that function to regulate the course of social life. Legal rules in the form of laws have several other forms, such as principles which are a representation of the goals to be achieved in social life. Departing from this principle, statutory regulations will be born.

The existence of the country as a nation state should be pursued by the government as state administrator, in order to make the law stands on community, organization, or any other agency. The state as a guarantor of the security of its people from the threat of crime both from abroad and within the country is very important. It is the duty of law enforcers to deal with criminal acts, but at a higher level extra prevention efforts are needed for extraordinary crimes, for example acts of terrorism, which if law enforcers are too late in handling them, the level of danger will increase. resulting will have a national impact.

The State Intelligence Agency has special authority because it is responsible for national security to prevent an extraordinary criminal act such terrorism. Wiretapping on terrorism suspect can prevent crimes that have a mass impact, reveal or anticipate real dangers and potential dangers that may arise or even reveal actions or words that could disturb public order. One of the government's efforts to overcome acts of terrorism in Indonesia can be seen by renewal of government regulations No.1 Year 2002 which has been confirmed as Indonesian Law Constitution No. 15 Year 2003 of Eradication of Criminal Acts of Terrorism and renewed as Constitution law No. 5 Year 2018 of Eradication of Criminal Acts of Terrorism.

Wiretapping is considered to be a very effective way to uncover terrorist crimes, including preventing and detecting terrorist crimes. As an instrument in disclosing crimes, wiretapping is a very useful technique. Wiretapping is currently an effective alternative in criminal investigations as a response to the development of crime modes, including the development of crimes. To a certain extent, wiretapping can also be seen as a crime prevention and detection tool (HADI, n.d.).

The Intelligence Agency has the authority to carry out investigations against suspects such as surveillance and wiretapping, this right certainly cannot be exercised arbitrarily by the State Intelligence Agency, It is necessary to submit a request for wiretapping to the chairman of the local district court. The application requires at least two pieces of evidence, this is a mandatory requirement for investigators in order to conduct wiretapping in cases of suspected criminal acts of terrorism. After that, the evidence provided by the investigator is then tested in court in order to provide approval, or vice versa. If approval is not obtained, investigators cannot conduct wiretapping on people suspected of committing criminal acts of terrorism. In the other hand, if approval is obtained, wiretapping can be procced for further investigation,

the results of which are confidential and cannot be shared with anyone. Apart from that, the results of the wiretapping must be reported to the investigator's superiors and also handed over to Kementrian Komunikasi dan Informasi (Kominfo). This has been regulated under Article 32, paragraph 3 of Law of the Republic of Indonesia Number 17 of 2011 on State Intelligence, commonly referred to as the State Intelligence Law (Martono, 2020).

With the State Intelligence Law, legal certainty for the execution of intelligence activities, as well as the limitations on the roles and authorities of intelligence, becomes much clearer. The law regulates various aspects such as the roles, objectives, functions, scope, implementation, confidentiality, coordination, financing, accountability, supervision of intelligence, and also criminal provisions. Intelligence agencies can no longer operate according to their own will or autonomy but must adhere to the mandates of the law (Kuncoro, 2019).

As evidence that meets the criteria to be considered legitimate, the intended evidence must indeed have its validity. Law No. 2 of 2002 concerning the Indonesian National Police also regulates the authority to "Seek Information and Evidence." As stipulated in Article 15, paragraph (1), letter i, it is explained that the information and evidence referred to are those related to both the criminal process and general police duties (Eato, 2017).

The regulations regarding evidence have been outlined in several laws, such as Law No. 19 of 2016, which amends Law No. 11 of 2008 concerning Electronic Information and Transactions, commonly known as the ITE Law. It states that "Interception or wiretapping is the activity of listening to, recording, diverting, altering, obstructing, or recording the transmission of electronic information or electronic documents that are not public in nature, whether using a communication cable network or a wireless network, such as electromagnetic or radio frequency emissions." Evidence in the form of wiretapping recordings is considered legitimate and has the same legal strength as physical evidence because, in essence, electronic evidence can still be used as evidence in court.

This is stipulated in Article 1, item 7 of the Regulation of the Minister of Communication and Information Technology Number 11/PER/M.KOMINFO/02/2006 regarding the technical aspects of intercepting information, which states, "Information interception is the act of listening to, recording, or tapping a conversation carried out by law enforcement officers by installing additional devices or equipment on the communication network without the knowledge of the person engaged in the conversation or communication."

Wiretapping is feared to potentially violate human rights. Therefore, the prohibition on wiretapping is regulated under Law Number 19 of 2016, which amends Law Number 11 of

2008 concerning Information and Electronic Transactions. This law indicates that all forms of surveillance, intrusion, and documentation (recording) conducted without the knowledge and consent of the person being monitored are prohibited. This condition implies that owning electronic devices does not grant the right to intercept or record others, as it involves the legal rights of other individuals (Fitria, 2017).

Referring to Article 28F of the Constitution of the Republic of Indonesia of 1945, it can be concluded that wiretapping is essentially an act that violates an individual's right to privacy. The content of Article 28F states that "Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her personality and social environment, and shall have the right to seek, obtain, possess, store, process, and convey information using all available channels."

Then, the prohibition on wiretapping is regulated in Article 40 of Law No. 39 of 1999 concerning Telecommunications, which states, "Every person is prohibited from conducting wiretapping activities on information transmitted through telecommunications networks in any form." This provision implies that wiretapping is a criminal act and violates an individual's freedom. However, Article 40 also provides a definition of wiretapping as "The activity of installing devices or additional equipment on telecommunications networks for the purpose of obtaining information in an unauthorized manner."

Based on this definition, wiretapping, as viewed from Law No. 36 of 1999, Article 40, is seen as an intentional and unlawful act with the purpose of obtaining information through the installation of tapping devices on telecommunications networks. This means that the act is carried out with the intent to harm others and poses a significant threat to public interests.

The lack of clear limitations regarding wiretapping methods potentially leads to future misuse. Without explicit boundaries, the right to privacy, which is otherwise protected by law, can easily be breached under the pretext of obtaining evidence for court proceedings.

## MATERIALS AND METHODS

The study adopts normative legal research methods, which basically involve collecting as well as critical analysis of legal literature. In this context, normative legal studies can be understood as an attempt to examine various existing legal documents, both in the form of laws and applicable norms, to understand the principles and legal rules contained therein. This approach is often referred to as doctrinal studies, where law is seen as an entity represented by written texts in laws and regulations, or as a set of norms that govern human behavior in everyday life.

According to Peter Mahmud Marzuki's view, normative legal studies include a process of discovery and development of legal rules, legal principles, and legal doctrines, which have the aim of providing answers to legal problems that arise in certain contexts (Marzuki & Sh, 2021).

## RESULT AND DISSCUSSION

According to the law, responsibility is a consequence of an individual's freedom regarding their actions, related to ethics or morality in carrying out a deed. According to Abdulkadir Muhammad, the theory of liability in tort (tort liability) is divided into several theories, namely: Liability Based on Fault, This theory holds that a person is liable for the harm caused by their actions if it can be proven that the person acted with fault or negligence. Strict Liability, This theory asserts that a person is liable for damages caused by their actions regardless of fault or negligence. The mere fact that the harm occurred is sufficient to establish liability. Vicarious Liability, Under this theory, a person or entity can be held liable for the actions of another person, such as an employer being liable for the actions of their employees. Absolute Liability, This is similar to strict liability but applies in situations where activities are inherently dangerous and the person engaged in such activities is liable for any resulting harm, regardless of any precautions taken.

Based on the Regulation of the State Intelligence Agency No. 7 of 2017 concerning the Code of Ethics for State Intelligence, the prohibitions in the Code of Ethics for Intelligence are outlined in Article 6 and include:

1. Making intelligence reports not based on facts, Leaking intelligence secrets
2. Disseminate knowledge, techniques, tactics and intelligence documents to other unauthorized parties
3. Become a double agent, Abusing the symbols and attributes of State Intelligence
4. Shaping public opinion that can harm the interests of the State and State Intelligence
5. Using social media to express opinions that attack the policies of the Leadership of State Intelligence Organizers
6. Leaving duties without permission from management
7. Committing acts of adultery, prostitution, gambling, and drinking intoxicating drinks
8. Abusing drugs and illegal drugs
9. Giving promises or hopes to other parties in the name of the service that could be detrimental to the interests of the organization
10. Receive gifts in the form of money or goods from anyone related to service matters
11. Become a member of a political party and practice practical politics, All other things

that can be categorized as attitudes, words, actions and behavior of State Intelligence Personnel that are contrary to the provisions of laws and regulations.

In the Regulation of the State Intelligence Agency No. 7 of 2017 concerning the Code of Ethics for State Intelligence, one of the general provisions is contained in Article 6 regarding the prohibitions in the Code of Ethics for the State Intelligence Agency. It specifies that actions taken by the State Intelligence Agency that violate the oath/promise of membership, the oath/promise of office, disciplinary regulations, and/or the Code of Ethics of the State Intelligence Agency of the Republic of Indonesia are prohibited.

In Article 6, letter (c), it states that it is prohibited to "Disseminate knowledge, techniques, tactics, and intelligence documents to unauthorized parties."

Wiretapping evidence, which is classified as one of the confidential intelligence documents, should not be disseminated to unauthorized parties. These parties can include media, journalists, civil society, or foreign entities (Siar, 2016).

This is considered to pose a threat to the sovereignty of the nation and state, as it involves state secrets pertaining to information, objects, and/or activities that are officially classified and require protection through confidentiality mechanisms. If such information is accessed by unauthorized parties, it can jeopardize the sovereignty, integrity, and security of the Unitary State of the Republic of Indonesia.

Additionally, this is considered detrimental as it involves the dignity, reputation, and privacy of individuals whose wiretapped evidence is disseminated, causing harm to these individuals in their social lives.

In Article 5 regarding the obligations of the intelligence code of ethics, it outlines the duties of an intelligence personnel aimed at maintaining the dignity and honor of the Intelligence Agency. This aligns with Article 6, which regulates prohibitions that can cause harm to the institution of the State Intelligence Agency, violate the oath/promise of membership, the oath/promise of office, disciplinary regulations, and/or the Professional Code of Ethics (Kristian & Gunawan, 2013).

Violations, sanctions, and rehabilitation for State Intelligence personnel who violate the Code of Ethics are regulated in Article 12, which classifies violations based on their severity: minor, moderate, and serious. This article provides a framework for enforcing ethics and proper governance in the State Intelligence Agency, ensuring that these violations are addressed with proportionality and fairness.

Furthermore, elaboration in Article 13 regulates the sanctions that the State Intelligence Agency may receive if State Intelligence personnel violate obligations and/or prohibitions as

referred to in Article 5 and Article 6.

The dissemination of confidential information or documents by members of the State Intelligence Agency can be categorized as a violation of the Code of Ethics under Article 5, letter (b). This is then regulated in Article 14 concerning the sanctions for personnel proven to have committed a moderate level violation of the code of ethics as stated in Article 12, letter (b), which is further elaborated on in Article 14, paragraph 3 furtherwise Postponement of periodic salary increases for 1 (one) year, Delay in attending education and training for 1 (one) year, Termination of performance allowance payments for 6 (six) months; And, Postponement of promotion for 1 (one) year (Sasangka et al., 1996).

## CONSLUSION

User considers it important to update the accountability of State Intelligence personnel who commit negligence or intentional acts regarding the evidence under their responsibility. This is a good step to ensure accountability and integrity within intelligence agencies. The necessity of wiretapping is crucial in providing initial evidence against individuals who are suspected or alleged to pose a threat. Thus, wiretapping allows for the interception of conversations through telephones or other electronic telecommunication devices involving the suspected individual.

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